In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 317

AMERICO DI PIETTO, ERNEST INFELICE, JAMES MIRRO, FRANK SANTUCCI, and ROBERT J. MCDONNELL, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

Following the filing of the brief in opposition to the petition for a writ of certiorari, information has come to our attention regarding prior unlawful electronic surveillance of petitioners Mirro and McDonnell by federal agents. Each of them was separately overheard discussing matters unrelated to this case on a single occasion (in June and December 1964 respectively), long after the events in 1961 giving rise to the

prosecution. We intend to make a disclosure to the district court in accordance with the procedure which this Court prescribes in *Alderman* v. *United States*, No. 133, this Term, pending on the government's motion to modify. In view of the irrelevancy of the overheard conversations, we suggest that it would be appropriate for the Court to rule on the petition in respect of the questions which it presents. See, *e.g.*, briefs for the government in opposition in *Scandifia* v. *United States*, No. 54, this Term, and *Franzese* v. *United States*, No. 84, this Term. A denial of the petition would be without prejudice to further proceedings in accordance with this Court's decision in *Alderman* v. *United States*, *supra*.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1968.

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